IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 1119 of 1995
Date of Decision: 5.9.2007

Swaraj Engines Limited .....Appellant

Versus

Punjab State Industrial Development Corporation ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri M.L. Sarin, Senior Advocate, with
Shri Vivek Sood, Advocate, for the appellant.

Shri N.S. Boparai, Advocate, for the respondent.

HEMANT GUPTA, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for permanent injunction restraining the defendant from recovering a sum of Rs.74,12,411.58p was dismissed on a preliminary Issue No.2, holding that the suit is not maintainable before the Civil Court.

The brief facts, as pleaded by the appellant, out of which the present appeal arises are that the State of Punjab acquired 157.99 acres of land in village Kumbra, Kambala, Kambali and Chilla, Tehsil Khara, District Ropar. Out of such land, 80 acres of land was transferred to the defendant i.e. Punjab State Industrial Development Corporation (for short `the Corporation') by the State Government. Land measuring 12.8 acres out of the land transferred to the defendant was allotted to the plaintiff vide letter of allotment dated 15.1.1988. The plaintiff was required to pay a

total sum of Rs.37,34,554/- towards the cost of the plot including development charges. The possession of the land was handed over to the plaintiff. Thereafter, the plaintiff invested Rs.4.40 crores on the construction of the building and installing machinery, equipment and various facilities such as setting up of diesel storage tanks and generating set etc. The commercial production started in January, 1989.

On 23.8.1990, the plaintiff received a notice from the defendant calling upon to remit an additional amount of Rs.8,40,124/- as development charges. The said amount was paid on 27.12.1990. On 30.7.1992, the defendant issued a show cause notice calling upon the plaintiff to deposit a sum of Rs.51,57,334/- towards enhancement in the cost of acquisition of land. No details of calculations were provided by the defendant. The plaintiff sought the details vide letter dated 23.9.1992 as to on what account, the enhanced amount was being claimed. But no reply has been received from the defendant. Thus, it was alleged that the demand raised is absolutely arbitrary, without jurisdiction in as much as no justification has been furnished by the defendant to claim the amount from the plaintiff. It is also pointed out that subsequently a registered notice dated 27.1.1993 was received from the defendant-Corporation that the compensation for the land in Phase-IX, SAS Nagar, Mohali, has been enhanced and the Corporation has been asked to pay a sum of Rs.3,05,76,197.78 and that the plaintiff's share in the above mentioned enhanced compensation works out to be Rs.74,12,411.58 as on 22.7.1993, subject to further enhancement, if any. It is alleged that such demand is wholly arbitrary and unsustainable as no details of claim have been furnished nor the appellant could be asked to pay the compensation of the

entire land.

In the written statement, the defendant by way of preliminary objection pointed out that in Clause-2 of the letter of allotment, it is contemplated that the price of the plot is subject to variation with reference to actual measurement of plot, cost of development and cost of acquisition of land by the Industries Department and in case of enhancement of compensation on account of acquisition of land of the Sector in question, by the Court or otherwise, the plaintiff is to pay additional price of the plot. Clause-2 of the letter of allotment, reads as under:-

> "Clause-2: The above price of the plot is subject to variation with reference to the actual measurement of the plot, cost of development and cost of acquisition of land by the Industries Department. In case of enhancement of compensation on account of acquisition of land of this Sector by the Court of otherwise, you shall have to pay the additional price of the plot, if any, determined by this Corporation within 30 days from the date of demand."

Subsequently, a conveyance deed was also executed in favour of the plaintiff on 12.12.1988. Clause-2(ii) of the conveyance deed reads as under:-

> "2 (ii). Pay the Government through the Corporation in cash any additional amount which may have to be paid by the Government on account of the enhancement of the compensation payable in

respect of the acquisition of the said land and all costs charges and other expenses including interest whatsoever relating thereto resulting from any reference, appeal, further appeal or writ petition or other litigation. In case of default in making the payment, the Government shall have the right to recover all the costs as arrears of land revenue."

It is, thus, pointed out that after the enhancement of compensation of the land in Phase-IX, SAS Nagar, Mohali, the Corporation was required to pay the enhanced compensation, as demanded by the State Government and in turn, the Corporation demanded the share of the enhanced compensation from the plaintiff. The defendant also raised a plea that the suit is not maintainable. It was stated that out of the land measuring 80 acres given to the defendant Corporation by the State Government, the salable area was 52.80 acres and 27.20 acres of land was retained for common facilities. Out of the salable area, 12.80 cores of the land was allotted to the plaintiff. The plaintiff is also liable to the proportionate amount of enhanced compensation on the area of 27.20 acres, which was retained for the common facilities. It is also pointed out that in Letters Patent Appeal No. 679 of 1989, the amount of compensation has been assessed as Rs.1,75,000/- per acre vide judgment dated 10.9.1990 along with other statutory benefits.

It may be noticed that on 13.2.1995, learned counsel for the plaintiff had made a statement that the plaintiff is not to file any replication in this case. The learned trial Court vide order dated 18.2.1995 framed the following issues out of which Issue No.2 was ordered

to be treated as a preliminary issue:-

1. Whether the plaintiff is entitled to permanent injunction restraining the defendant from recovering a sum of Rs.74,12,411.58 paise? OPP.
2. Whether the suit is not maintainable in the present form?OPD.
3. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.
4. Whether the suit is bad for non-joinder of necessary parties? OPD.
5. Whether the suit is barred by time? OPD.
6. Whether the suit has not been valued properly for purposes of jurisdiction and court fee? OPD.
7. Whether the suit has not been filed by proper person and deserves to be dismissed? OPD.
8. Whether the plaintiff has not come to the court with clean hands? If so, its effect? OPD.
9. Relief.

On the basis of the finding on the preliminary issue No.2, the suit and the first appeal, were dismissed and, therefore, the plaintiff is in second appeal.

Learned counsel for the appellant has vehemently argued that the Courts below have returned a finding that the Civil Court has no jurisdiction to entertain the suit, although there is no such objection and the issue framed. The Courts have returned a finding that in terms of Section 4 of the Punjab Pubic Moneys (Recovery of Dues) Act, 1983 (for

short `the Act'), the jurisdiction of the Civil Court is barred. It is contended that the said Act is not applicable in respect of the amount, if any payable, on account of enhanced compensation of the land allotted to the appellant. In any case, Section 4 of the Act bars the filing of a suit by the defendant-Corporation to recover the amount and not a suit for injunction filed by the allottee such as the appellant. Still further, the plaintiff had no agreement with the State Government, whereby the amount of enhanced compensation can be ordered to be recovered as arrears of land revenue. Even if the agreement empowers the Corporation to recover the amount as arrears of land revenue, it is the State Government alone which is competent to recover the amount and not the defendant Corporation. It is also contended that in terms of the interim order passed by this Court on 29.8.1995, the Managing Director of the defendant was directed to decide the matter within three months but still in the decision taken by the Managing Director of the Corporation, the plaintiff has not been informed the basis to recover the amount from the plaintiff on account of enhanced amount of compensation. It is also contended that the Managing Director of the Corporation is not competent to adjudicate upon the issue of enhanced compensation as he cannot be permitted to be judge in his own cause.

On the other hand Shri Boparai, learned counsel for the defendant has argued that in terms of Section 4 of the Act, the jurisdiction of the Civil Court is barred. The bar of jurisdiction is applicable in respect of all actions to be taken by the Corporation to recover the amount under the Act and not only to the suits of recovery to be filed by the Corporation. It is further contended that since the Act is a complete code and provides machinery and mode for recovery of the amount of the public

dues, therefore, the jurisdiction of the Civil Court would be impliedly barred in terms of Section 9 of the Code of Civil Procedure. It is further argued that the Managing Director has passed an order on 12.4.1996 and the said order is in terms of the conditions of letter of allotment and of conveyance deed. Therefore, the plaintiff is now estopped from challenging the said order. In any case, the said order cannot be challenged by the appellant before the Civil Court.

I have heard the learned counsel for the parties on the following substantial questions of law:-

1. Whether the provisions of Punjab Pubic Money (Recovery of Dues) Act, 1983 are applicable in relation to the transaction between the parties?
2. Whether the jurisdiction of the Civil Court is barred impliedly or expressly in terms of Section 4 of the Act?

The argument raised by the learned counsel for the appellant is not tenable that without there being any issue regarding the jurisdiction of the Civil Court, the finding returned that the suit is not maintainable, cannot be sustained. The issue framed is regarding the maintainability of the suit. Lack of jurisdiction of the Civil Court is part of the maintainability of the suit. Still further, both the Courts have examined the question of jurisdiction of the Civil Court in terms of the provisions of the Act. Therefore, it cannot be said that the plaintiff was not aware of the issue involved in the suit. Since a question has been specifically raised and dealt with, the pleading or the non framing of issues, loses significance.

Before examining the respective contentions of the

parties, the provisions of the Act need to be reproduced:-

> "2. Definitions. In this Act, unless the context otherwise requires:-
>
> (a) `Banking company' means-
>
> xxx xxx xxx
>
> (b) "Collector" means a Collector of the district and includes any person appointed by the State Government to perform the functions of a Collector under this Act;
>
> (c) "Corporation" means the Punjab Financial Corporation established under the State Financial Corporations Act, 1951 and includes any other corporation owned or controlled by the Central Government or the State Government which the State Government may, by notification specify;
>
> xxx xxx xxx
>
> (3) *Recovery of certain dues as arrears of land revenue.*-(1) Where any person is a party
>
> (a) to any agreement, relating to a loan, advance or grant given or relating to credit in respect of, or relating to hire-purchase of goods sold by the State Government, a banking company, a Corporation or a Government company, as the case may be, under the State sponsored scheme; or
>
> (b) to any agreement relating to a guarantee given by the State Government, a banking

company, a Corporation or a Government Company in respect of a loan raised by an Industrial Concern; or

(c) to any agreement providing that any money payable thereunder to the State government shall be recoverable as an arrears of land revenue:-

(i) makes any default in repayment of the loan or advance or any instalment thereof; or

(ii) having become liable under the conditions of the grant to refund the grant or any portion thereof, makes any default in the refund of such grant or any portion thereof; or

(iii) otherwise fails to comply with the terms of the agreement;

then in the case of the State Government, such officer as may be authorised in that behalf by the State government by notification, and in the case of a banking company, a Corporation or a Government Company, the Managing director, thereof, by whatever name called, may send a certificate to the Collector mentioning the sum due *(emphasis supplied)* from such person and requesting that such sum together with costs of the proceedings be recovered as if it were an arrear of land revenue.

(2) A certificate sent under sub-section(1) shall

be conclusive proof of the matter stated therein and the Collector on receiving such certificate shall proceed to recover the amount stated therein as an arrear of land revenue."

The defendant Corporation is a Corporation notified under Section 2(c) of the Act, vide notification dated 18.9.1986 published in the Punjab Government Gazette dated 26.9.1986. The learned counsel for the respondent has argued that the defendant is also a Government Company as defined in Section 2(e) of the Act as it is a Government Company within the provisions of the Companies Act, 1956. Reference was also made to various notifications, whereby some of the provisions of the State Financial Corporation Act, 1951, have been made applicable to the defendant-Corporation. But the said aspects are not relevant for the determination of the issues raised in the present petition as what is required to be examined is whether in terms of Section 3 of the Act, the defendant, a Corporation within the meaning of Section 2(c) of the Act, is competent to raise demand in respect of enhanced compensation to recover the same as arrears of the land revenue. Section 3(1)(c) and sub Section (iii) of Section 3 (1)(c) of the Act, are applicable in the facts of the present case. The said provisions contemplate that whether any person is a party to any agreement providing that any money payable thereunder to the State Government shall be recoverable as arrear of land revenue and if such person fails to comply with the terms of the agreement, then in case of a Corporation, the Managing Director thereof, may send a certificate to the Collector mentioning the sum due from such person and requesting that such sum together with costs of the proceedings be recovered as if it were an arrear of land revenue.

The letter of allotment and the subsequent conveyance deed are the agreements between the parties and in terms of Clause-2 of the conveyance deed, the Corporation has been given power to recover the additional amount which is to be paid to the Government on account of enhancement of compensation. The said conveyance deed recites that vide conveyance deed dated 4.6.1986, the State Government conveyed and transferred the land measuring 80 acres to the Corporation for and on behalf of and for the benefit of the use of subsidiary associate company. The plaintiff is one of the associate Companies of the Corporation. Clause-2 of the conveyance deed recites that use of the land is exclusively for the purpose of establishing the project(s) as the Government may approve and for no other purposes and that the Company shall pay from the date of delivery of possession of the said land by Government/Corporation all such taxes, land revenue other charges that are payable or that may be thereafter payable on or in respect of the said land. Thus, the enhanced amount of compensation has to be paid by the plaintiff to the Government through the Corporation. It is stipulated in Clause 2(ii) that in case of default in making the payment, the Government shall have a right to recover the due amount as arrears of land revenue.

The argument that it is the Government, which has the right to recover the arrears as arrears of land revenue and not the Corporation, is misconceived. The plaintiff has entered into an agreement with the defendant-Corporation. In terms of the agreement between the parties, the plaintiff has undertaken to pay to the Government through the Corporation. Under the Act, the Managing Director of the Corporation is competent to send a certificate to the Collector mentioning the sum due

from such person such as the plaintiff. Therefore, the argument that the Act is not applicable in respect of transaction between the parties, is not tenable. In terms of the words appearing after Clause (iii) of Section 3(1)(c) of the Act, the officers as authorised by the State Government by way of notification are competent to send a certificate to the Collector. Whereas in case of a Banking Company, a Corporation or a Government Company, the Managing Director thereof or by whatever name called, is competent to send a certificate to the Collector. Therefore, in terms of Section 2(c) of the Act, the Managing Director is competent to send a certificate to the Collector to recover the amount as arrears of land revenue. The provisions deal separately in respect of authorised officers on behalf of the State Government and on the other hand, the authorised officer of the other Corporations and Banking Company etc.

One of the earliest cases on the issue is that of **Director of Industries, U.P. and others v. Deep Chand Aggarwal, (1980) 2 Supreme Court Cases 332**, wherein the identical provisions contained in the U.P. Public Moneys (Recovery of Dues) Act, 1965, were being considered by the Hon'ble Supreme Court. It may be noticed that Section 3 of the Act is pari-materia with Section 3 of the U.P. Act. The Hon'ble Supreme Court, has held to the following effect:

> "It may be seen that Section 3(1)(c) of the Act provides that where any person is a party to any agreement providing that any money payable thereunder to the State Government shall be recoverable as arrears of land revenue and such person makes any default in repayment of the loan

> or advance or any instalment thereof then the arrears due and payable by him may be recovered as if it were an arrear of land revenue by issuing a certificate to the Collector. The remedy of the State Government to recover the amount by instituting a suit also remains unaffected by the Act."

Later in **S.K. Bhargava v. Collector, Chandigarh and others, (1998)5 Supreme Court Cases 170**, the Hon'ble Supreme Court considering the provisions of Haryana Public Moneys (Recovery of Dues) Act, 1979, held that the word sum due appearing in Section 3(2) of the Haryana Act results into civil consequences and the determination being final and conclusive, would have the result of the passing of a final decree, inasmuch as the defaulters from whom any amount is found to be due, would become liable to pay the amount so determined. Therefore, such determination cannot be done without notice to the alleged defaulter. Thus, in terms of Section 3(1)(c) of the Act, the Managing Director can send the certificate to the Collector to recover it as a land revenue mentioning the sum due arrived at after notice to the defaulter so as to comply with the principles of natural justice. Therefore, the argument that the Act is not applicable in respect of the transaction in question, is not tenable. Thus, the first substantial question of law stands answered against the appellant.

The argument of the learned counsel for the appellant that the jurisdiction of the Civil Court is not barred as Section 4 bars an action for recovery of any sum recoverable under Section 3 of the Act in a Civil Court against any person referred to in sub Section (1) of that Section, is not tenable. Section 4 of the Act reads as under:-

> "**4**. *Bar of suits*.- No suit for recovery of any sum recoverable under section 3 shall lie in a civil court against any person referred to in sub-section (1) of that section and the provisions of this Act shall have effect notwithstanding anything in any other law for the time being in force."

A reading of Section 4 of the Act, would show that no suit for recovery of any sum recoverable under Section 3 of the Act would lie in a Civil Court against any person referred to in sub section (1). The question arises whether the Corporation is a person referred to in sub section (1) and that whether the suit for injunction can be said to be a suit for recovery of any sum recoverable under Section 3 of the Act.

Section 3(1) of the Act is applicable where any person is a party to an agreement. Therefore, "the person" in Section 3 of the Act, will include the Corporation as well. The next aspect which is required to be examined is whether the suit for permanent injunction can be said to be a suit for recovery filed by the plaintiff against the defendant-Corporation. No doubt, the suit for injunction cannot be said to be a suit for recovery, but what is sought by virtue of injunction is that the amount should not be recovered from the plaintiff. Since the mechanism under the Act has been provided as an alternative mode of speedier recovery of public dues, the intention of the legislature seems to be that such matters should not be dealt with by the Civil Court. Therefore, the suit for recovery in fact, means any suit where the recovery of the sum recoverable is an issue and if it is so, then the Civil Court will not have the jurisdiction to entertain the

suit.

Even if it is assumed that Section 4 of the Act does not specifically bar the jurisdiction of the Civil Court to entertain the suit for injunction, for restraining the defendant from recovering the amount of enhanced compensation, still the scheme of the Act is such which leads to the inference that the jurisdiction of the Civil Court is impliedly barred. The Act contemplates to determine the sum due. Such sum due has to be determined after complying with the principles of natural justice. Such determination is for speedier recovery of the public dues. Since, the recovery is being effected under a statute, the jurisdiction of the Civil Court is impliedly barred. The bar of jurisdiction of the Civil Court has been upheld by the Hon'ble Supreme Court in **S.K. Bhargava's case (supra)**. Though Section 3 of the Haryana Act expressly bars the jurisdiction of the Civil Court, but in the present case, even in the absence of express bar, the jurisdiction of the Civil Court is impliedly barred in view of the mechanism contemplated under the Act.

In **Munshi Ram and others v. Municipal Committee Chheharta, (1979) 3 Supreme Court Cases 83,** it was held that where a particular remedy is provided to be sought in a particular forum, in a particular way, it must be sought in that forum in that manner and all other forums and modes of seeking it are excluded. It was held to the following effect:-

> "It is well-recognised that where a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be

> sought in that forum and in that manner, and all other forums and modes of seeking it are excluded. Construed in the light of this principle, it is clear that Sections 84 and 86 of the Municipal Act bar by inevitable implication, the jurisdiction of the Civil Court where the grievance of the party relates to an assessment or the principle of assessment under this Act."

Since the right and the forum has been provided under the Act, the plaintiff cannot be permitted to invoke the jurisdiction of the Civil Court. The jurisdiction of the Civil Court is impliedly barred. The second substantial question of law is answered against the appellant.

The argument that plaintiff has not been informed the basis to recover the amount from the plaintiff on account of enhanced amount of compensation even in terms of the order passed by this Court on 29.8.1995, is again misconceived.

The said order is not subject matter of challenge in the present appeal. Therefore, I do not wish to express any opinion on the merits of the said order, which may prejudice the claim of either party. Suffice it to say that an order has been passed by the Managing Director of the Corporation in terms of the statutory provisions. Whether the said order satisfies the requirements of law or not is not required to be examined in the present appeal. It is open to the appellant to seek its remedy as may be available to the appellant in accordance with law.

However, the argument that the Managing Director of the Corporation is not competent to adjudicate upon the issue of enhanced

compensation as he cannot be permitted to be judge in his own cause is again not tenable. In fact in terms of the agreement between the parties, such authority is given to the Managing Director of the Corporation. Therefore, the plaintiff cannot be permitted to dispute the authority given to the Managing Director. Even under the Act, the Managing Director of the Corporation is the competent authority to determine the amount due from the plaintiff. For the said reason also the argument raised by the appellant cannot be accepted. Even otherwise, it was held by the Hon'ble Supreme Court in **Delhi Financial Corporation and another v. Rajiv Anand and others, (2004)11 Supreme Court Cases 625**, that the doctrine that `no man can be a judge in his own cause' can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. It was held to the following effect:-

> "The doctrine that "no man can be a judge in his own cause" can be applied only to the cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. Merely because an officer of a corporation is named to be authority, does not by itself bring into operation the doctrine "no man can be a judge in his own cause". For that doctrine to come into play it must be shown that the officer concerned has a personal bias or connection or a personal interest or has personally acted in the matter concerned and/or has already taken a

decision one way or the other which he may be interested in supporting."

In view of the above, I do not find any ground to interfere in the findings recorded. Consequently, the appeal is dismissed and the judgment and decree passed by the Courts below are maintained.

September 5, 2007 (HEMANT GUPTA)
ds JUDGE